Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal State Joint Board on	)	CC 96-45
Universal Service	)	

COMMENTS OF GENERAL COMMUNICATION, INC.

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TABLE OF CONTENTS

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	)	
Federal State Joint Board on	)	CC 96-45
Universal Service	)	

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SUMMARY

The FCC sought comment on four proposals for reform of universal service programs drafted by state Joint Board members and staff. These proposals represent a commendable fresh look at the ongoing debate about the future of universal service programs. Each of these proposals is brief, stating different (and sometimes competing) policy objectives. None offers the detailed analysis of implementation and the impact of implementation that is necessary before adoption. GCI encourages the Joint Board to further refine its proposals based on these comments and to combine its consideration of the role of the states in administration of universal service programs with the legal issues raised by the Tenth Circuit in the *Qwest II* order.[1]

[1] *Qwest Communications International, Inc. v. FCC,* 398 F.3d 1222(10th Cir. 2005) ("*Qwest II*")

I. INTRODUCTION

All of these proposals, in varying degrees, recognize that the FCC must first define what constitutes an "affordable" and a "reasonably comparable" rate for universal service. Effective reform of universal service programs is not possible until the fundamental goals of universal service are clearly and measurably articulated, and the FCC resolves the issues identified by the United States Court of Appeals for the Tenth Circuit in *Qwest I and II*.[2] As the 10th Circuit has ruled, the FCC must define what constitutes "affordable" and "reasonably comparable" "universal service," and therefore the level of support that is "sufficient" in rural and high cost areas.[3] The Commission cannot select one of the Act's universal service principles and ignore all others.[4] To meet the Tenth Circuit's requirements, the FCC must define all of the key universal terms and principles written by Congress.[5] Only after it has clearly articulated its objectives can the Commission adapt the universal service programs to achieve those objectives, in light of the significant technological and market changes of recent years and the underlying defects in the existing programs.

The Tenth Circuit's insistence that the Commission define its key objectives is necessary to achieve those policy objectives. Over twelve years ago, Congress recognized that defining outputs and outcomes for federal programs was essential to proper management and oversight, and to preventing waste, fraud and abuse, and thus required federal agencies to develop performance plans for each program. When Congress enacted the Government Performance and Results Act of 1993 (GPRA), it found:

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[2] *Qwest Corp. v. FCC,* 258 F.3d 1191 (10th Cir. 2001) ("*Qwest I*") and *Qwest II.*
[3] *See Qwest I,* at 1202; *Qwest II,* at 1234.
[4] *Qwest II,* at 1234.
[5] 47 USC Section 254(b).

(1) Waste and inefficiency in Federal programs undermine the confidence of the American people in the Government and reduces the Federal Government's ability to address adequately vital public needs;

(2) Federal managers are seriously disadvantaged in their efforts to improve program efficiency and effectiveness, because of insufficient articulation of program goals and inadequate information on program performance; and

(3) Congressional policymaking, spending decisions and program oversight are seriously handicapped by insufficient attention to program performance and results. [6]

The GAO echoed these sentiments when it observed, with respect to the E-rate program, but in a statement that could have been applicable to any of the FCC's universal service programs, the FCC "did not develop performance goals and measures that could be used to assess the specific impact of these funds and improve the management of the program."[7] Section 254 of the Communications Act, as supplemented by the FCC, defines the principles upon which the FCC's universal service policies must be based.[8] It is, however, up to the FCC to translate those principles into actual program performance objectives, which can then be used to evaluate the state joint board members' various proposals.

The four proposals from state joint board members and staff all, in varying degrees, perpetuate many of the defects of the current system. Some of these proposals recognize the importance of a national affordability benchmark, but the suggested benchmarks lack any empirical tie to actual rates and service affordability. None of the proposals address the underlying issue of whether universal service support is necessary to deliver services. Some of these proposals suggest limiting support for wireless service, but they do not address the

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[6] Pub. L. No. 103-62, 107 Stat. 285 (codified in scattered sections of 31 U.S.C.).

[7] *Telecommunications: Federal and State Universal Service Programs and Challenges to Funding*, Report to the Ranking Minority Member, Subcommittee on Telecommunications and the Internet, Committee on Energy and Commerce, House of Representatives, GAO-02-187, at 5 (2002) ("*GAO 2002 Report*"). Notably, the FCC's Performance Budgets for both FY2005 and FY2006 have each promised that a program evaluation of the Universal Service Fund would be released in the following fiscal year. *See* FCC Performance Budget FY2006, at 10, available at http://www.fcc.gov/Reports/fcc2006budget_main.pdf (2006); FCC Performance Budget FY2005, at 22, available at http://www.fcc.gov/Reports/fcc2005budget_main.pdf (2005).

[8] 47 USC Section 254(b)(1)-(7).

underlying issue of defining supported services. None of the proposals adequately distinguishes between support for low-income consumers, and support for all other consumers, who will likely have a higher affordability threshold than their low-income neighbors. Some of these proposals also continue merely to hypothesize a connection between costs (an input), rates (an output), and the Act's goals (which focus on rates) without the empirical basis on which the Tenth Circuit has insisted. None of the proposals fully harnesses the benefits of competition in delivering universal service, and continues to postulate, without any hard evidence and despite technological developments in the marketplace, that some communities are "too small" for competition.[9] Finally, the support envisioned by these plans, all of which create some kind of state "block grant" process, potentially makes universal service so unpredictable from year to year that it will stifle investment.

II. THE EXISTING DEFINITION OF SUPPORTED SERVICES NEEDS CLARIFICATION

One of the fundamental problems underlying federal universal service is a lack of consensus as to what should constitute "universal service." The FCC has defined universal service as single-party, voice-grade access to the public switched network, with local usage, DTMF signaling (or its functional equivalent), with access to emergency services, operator services, interexchange services and directory assistance.[10] Over time, however, some parties have tried, one way or another, to exclude services provided using mobile technology. The existing regulations support broadband capabilities for incumbent wireline telephone companies

[9] In GCI's experience, that assumption is wrong.
[10] 47 C.F.R. 54.101(a). Networks should be designed to not impede the deployment of advanced services, but broadband is not a supported service. See also 47 USC 254(c).

even though no other broadband networks can be subsidized for such services.[11] The FCC must clearly define what universal communications services should be available nationwide in order for the goal of universal service to be achieved.

An example of the impact of this inconsistency is found in the area north of Anchorage served by MTA (Matanuska Telephone Association). MTA, in anticipation of competition, has invested heavily to improve its network to make it capable of delivering video services in competition with GCI, the cable provider.[12] Even though the cost of constructing the shorter length loops necessary for video programming is significantly more than constructing the network necessary to provide telephone service, MTA has made that investment because it can recover the cost through its USF subsidy and the NECA pool. While this practice may be permitted under the current universal service regulations, it distorts the competitive market by enabling one provider of video programming services, the telephone company, to construct plant to compete with a cable provider with universal service support.[13] It also creates the absurd situation where the local phone company, having waived its rural exemption by upgrading its network with the expectation of continuing universal service support to compete with the cable provider by offering video service, is asking the state commission to suspend its 251(c) obligations because competition will "burden" them by reducing the amount of future support they might receive.[14] The existing rules, that sometimes support the construction of broadband capable networks and sometimes do not, are not only not competitively neutral, but may also

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[11] *Availability of Advanced Telecommunications Capability in the United States,* Fourth Report to Congress, GN Docket 04-54 (Sept. 9, 2004) ("*Section 706 Broadband Report*")

[12] See "Allied Telesyn Offers "triple play, " Network News, June 3, 2002 found at www.networkworld.com/news/2003/0630carrallied.chtm?nl

[13] Because MTA is rate regulated, its use of that plant to provide both regulated and unregulated services is one that is significant to the state commission. Order No. 2 in RCA docket U-03-037 issued August 19, 2003.

[14] See RCA docket U-05-046, MTA Petition for Suspension and Modification of Certain 251(c) Obligations Pursuant to Section 251(f)(2) of the Telecommunications Act of 1996.

create traps for short-sighted ILEC monopolies who have designed business plans to maximize their universal service recovery.

As the Courts have recognized, the Act defines universal service as "an evolving level of telecommunications services," and looks at the availability of those services from the consumer's perspective, rather than the provider's.[15] Accordingly, what the Commission should be seeking to define are the critical elements of the service the customer is expected to be able to receive, irrespective of how that service is delivered. Defining universal service in terms of the services purchased by consumers rather than the technological platform over which the services are delivered is necessary to be consistent with the statutory[16] principle that, that "universal service support mechanisms and rules should be competitively neutral," meaning that they "neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another."[17]

However, as new communications services – such as wireless, broadband, and, to a lesser extent, IP telephony – are being offered to and adopted by consumers in both urban/suburban areas and in rural areas, what little consensus there was about what constituted "universal service" is dissipating. Before the passage of the 1996 Act, universal service supported all switched access lines provided by the monopoly ILEC wireline networks, regardless of whether a particular location was served by a single line or by multiple lines.[18] With the growth in the popularity of wireless services, however, a single person may now connect to the public switched

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[15] *Alenco v. FCC*, 201 F.3d 608, 621(5TH Cir. 2000) ("The purpose of universal service is to benefit the customer, not the carrier.")
[16] 47 USC Section 254(b)(7).
[17] *First Universal Service Report & Order*, 12. FCC Rcd. 8776, 8801 (1997).
[18] See 47 C.F.R. 36.611 (1988); *MTS and WATS Market Structure Amendments of Part 67 (New Part 36) of the Commission's Rules and Establishment of a Federal-State Joint Board*, Report and Order, 2 FCC Rcd 2639 (1987).

network via multiple networks, and those networks can all receive universal service support if they meet the requirements for certification as "eligible telecommunications carriers."[19] The number of wireless subscribers now exceeds the number of total wireline access lines served by ILECs and CLECs.[20] Moreover, wireless services are now broadly available in rural as well as urban America.[21] The FCC recently concluded, "CMRS providers are competing effectively in rural areas" and in fact "the average number of mobile operators estimated to be serving rural areas in the United States is greater than the total number of national mobile operators serving countries with a reputation of having highly advanced mobile service markets such as Japan, South Korea, and Finland."[22] The FCC has raised the question as to whether universal service should support all connections or only a primary connection.[23]

Broadband services have also grown dramatically since the passage of the 1996 Act. As of June 2004, the FCC reported over 32 million broadband connections, a ten-fold increase since December 1999.[24] These services are also proliferating in many rural communities.[25] For example, the National Telecommunications Cooperative Association (NTCA), a non-profit association representing more than 550 small and rural telephone cooperatives and commercial

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[19] *See* 47 U.S.C. § 214(e).

[20] As of July 8, 2005, the FCC reported that ILECs served 145 million lines, and CLECs served 33 million lines, for a total of 178 million wireline lines. As of that same date, the FCC reported that wireless carriers served 182 million subscribers. Industry Analysis and Technology Division, Wireline Competition Bureau, *Local Telephone Competition: Status as of December 31, 2004,* Tables 1 and 13 (rel. July 2005). CTIA reports that as of December 31, 2004, wireless carriers served 182 million subscribers. *CTIA's Semi-Annual Wireless Industry Survey Results June 1985-December 2004,* available at http://files.ctia.org/pdf/CTIAYearend2004Survey.pdf.

[21] *See generally Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, Ninth Report, WT Docket 04-111 (Sept. 28, 2004) ("*CMRS Report*").

[22] *Id.* at ¶ 111.

[23] *Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, CC Docket No. 96-45 (rel. June 8, 2004). Congress subsequently prohibited the FCC from expending any appropriated funds to implement a primary-line support mechanism. *See Federal-State Joint Board on Universal Service*, Report and Order, CC Docket 96-45, at ¶ 16 (Mar. 17, 2005).

[24] Industry Analysis and Technology Division, Wireline Competition Bureau, *High Speed Services for Internet Access: Status as of June 30, 2004* at Table 1 (rel. Dec. 22, 2004).

[25] *See generally Availability of Advanced Telecommunications Capability in the United States,* Fourth Report to Congress, GN Docket 04-54 (Sept. 9, 2004) ("*Section 706 Broadband Report*").

companies, reported in a 2004 survey that 92 percent of responding members provided broadband service – up from just 58 percent in 2000.[26] Similarly, the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), a national trade association representing more than 560 small telecommunications carriers serving rural areas in the U.S., also found that their membership has been able, on average, to make broadband available to 88 percent of their customers.[27] Almost all responding companies were capable of providing advanced telecommunications services (greater than 200kbps in both directions).[28] CenturyTel, a midsize ILEC serving many rural areas, offers DSL to almost 70% of its access line customers.[29] The National Exchange Carrier Association (NECA), which files access tariffs on behalf of small rural telephone companies, indicates that 814 member companies offered DSL services in 2003.[30] In fact, as of December 2003, only 6.8 percent of zip codes in the United States reported no providers of high-speed data service.[31] The growth and availability of DSL has led to calls to include broadband more explicitly within the services to be supported by universal service.[32]

The growth of new services and competitors presents both opportunities and challenges. On one hand, the emergence of competitors using wireless and other new technologies offers an opportunity to provide high-quality voice services at lower cost to the very customers that the universal service programs are meant to benefit. For example, the Texas commission recently

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[26] *Id.* at 31.
[27] *Id.*
[28] *Id.*
[29] *Id.*
[30] *Id.* at 30-31.
[31] *Id.* at 30.
[32] As the FCC has recognized, its existing high cost support programs provide some support for upgrading outside loop plant to support broadband services. *Id.* at 32 ("The universal service fund, which helps preserve and advance universal service for all Americans, supports the deployment of facilities that can be used to provide broadband in rural communities. Rural carriers receive over $1 billion annually in universal service support for their underlying copper loop network.").

certified a mobile satellite carrier as an ETC, extending telephone service into previously unserved areas, and providing a competitive alternative anywhere within the SBC, Verizon, Valor and Sprint territories in Texas.[33] This is a concrete illustration of the principle that competition and universal service are in fact complementary and not competing goals. On the other hand, because of the manner in which support has been distributed new services can place added demands on a universal service fund that is already straining. The FCC's struggle to address the benefits and challenges of technological and marketplace developments has led to legal uncertainty and significant political disagreement about how universal service should be structured and what services should be supported.

Only the Commission can eliminate this uncertainty. Eliminating the confusion about the definition of universal service is a predicate to universal service reform because one must know for "what service" assurances of affordable and reasonably comparable rates are being provided, before it can be determined how best to do so.

III. THE ISSUES RAISED BY THE JOINT BOARD MEMBERS SHOULD BE ADDRESSED IN TANDEM WITH THE QWEST II REMAND

Once the Commission makes clear what services are intended to be universal, it must then answer the core questions presented by the *Qwest* cases, i.e., what rates for universal service are "affordable" and "reasonably comparable," and what rates are not. These criteria are critical to evaluating the Joint Board members' proposals because without some guidance as to what constitutes "affordable" and "reasonably comparable" service, the FCC's delegation of authority

[33] Public Utility Commission of Texas Docket No. 31401, Application of DialTone Services, L.P., Order 3 issued September 2, 2005 and Public Utility Commission Docket No. 31399, Application of DialTone Services, L.P., Order 5 issued September 2, 2005.

to state commissions to determine appropriate distribution of support will be effectively unconstrained – with no meaningful accountability.

As discussed above, to affect meaningful universal service reform the FCC must address the issues raised by the Tenth Circuit in its remand of the *Qwest* II case in conjunction with consideration of the state joint board members' reform proposals. The Tenth Circuit held that the FCC had again failed to adequately define reasonably comparable rates, or to design universal service programs that met the standards of 254(b).[34] The court rejected for a second time the FCC's attempt to ensure that the goals of universal service were met by distributing from the federal fund only when statewide average costs were a certain percentage above the national average. The court recognized the fundamental flaw in this approach -- that without evidence of the relationship between costs and rates, costs could not be used as a standard for defining affordability of rates. Indeed, with varying means by which states regulate rates, or not, it may not be possible to meet the statutory standard of assurance for reasonably comparable and affordable rates without more involvement by state regulators.

The court in *Qwest II* required the FCC to examine and explain the relationship between rates and costs. It held that it was not adequate to define "reasonably comparable" rates based on a cost benchmark without "empirically demonstrating a relationship" between the costs and rates.[35] Nonetheless, some of the plans, such as the USERP proposal, continue expressly to use a cost-based benchmark, rather than focusing on what the statute addresses – consumer rates.[36]

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[34] *Qwest II* at 1233-1238.
[35] Qwest II at 1237.
[36] In their landmark study, "Reinventing Government: How the Entrepreneurial Spirit is Transforming the Public Sector," David Osborne and Ted Gaebler observed, "Traditional bureaucratic governments . . . focus on inputs, not outcomes. . . . They pay little attention to outcomes – to *results*." D. Osborne & T. Gaebler, *Reinventing Government: How the Entrepreneurial Spirit is Transforming the Public Sector* 139 (Plume 1993) (emphasis in original).

Moreover, the standard for affordability should not be the same for all consumers. The low income support mechanisms today recognize that for the lowest-income segment of the population, the affordable rate will be lower than for the rest of the population. Several of the state members' proposals, however, merge the low-income mechanisms with the high cost mechanisms without actually acknowledging the critical challenges facing low income Americans, which may be both independent of and exacerbated by their residence in high cost areas.

The ruling in *Qwest II* highlights another fundamental flaw in the current universal service programs that is perpetuated under some of the proposals. By determining support based on a wireline provider's costs to offer service rather than on the support necessary to produce an affordable and reasonably comparable rate, the existing mechanisms and some of the proposals provide support where it is not necessary. These proposals do not take advantage of market-based mechanisms to reduce the overall cost to society of delivering universal service. Nor do they use those market-based mechanisms to maintain market discipline and send signals to all market participants that will lead to further dynamic cost reductions. When quality service can be provided using another technology at affordable and reasonably comparable rates, the cost associated with that technology should be used to determine the adequacy of support and also be used to set the amount of support available to all carriers. Indeed, doing so would reward efficiency, mirroring the economic engine that makes providers in an unsubsidized market deliver the best combination of quality services and low prices. Any effort to modify the universal service support systems should remedy this fundamental flaw and evolve the universal service programs to reflect currently available technologies.

Until the FCC defines both affordability and reasonable comparability, it cannot determine how much support is necessary, or even whether support is necessary as required by section 254(e). Paying support where it is not necessary can violate the principle of affordability by unnecessarily increasing the rates charged to others.[37] Until the FCC resolves the issues in the Qwest II remand by defining "affordable" and "reasonably comparable" and ensuring that all of the goals stated in 254 (b) are met, ancillary efforts to reform universal service are fruitless. Without standards by which to measure their effectiveness, piecemeal reform efforts are futile.

IV. UNIVERSAL SERVICE REFORM MUST ACCOMMODATE COMPETITION IN HIGH COST AREAS

Universal service programs need to be reconciled with the development of competitive markets. The Senate Commerce Committee recognized that universal service and competition were mutually reinforcing objectives that would bring innovation to consumers at the most efficient price. "The Committee expects that competition and new technologies will greatly reduce the actual cost of universal service over time, thus reducing or eliminating the need for universal service support mechanisms as actual costs drop to a level that is at or below the affordable rate for service in an area." [38] Yet an assumption seems to underlie both current universal service programs and reform proposals that some markets are too small or isolated to attract competitors.

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[37] *Alenco, supra.*, 201 F.2d 608, 620 (5th Cir. 2000). The existing rules also permit excessive support payments in other ways, some of which would be addressed under some of the state proposals. For example, Joint Board Member Gregg proposes in Appendix B to consolidate study areas, but suggests exempting Alaska. However, combining study areas would address the current situation in Fairbanks where the incumbent provider that serves Fairbanks receives switching support even though the Fairbanks switch serves more than 50,000 lines because ACS installed two remotes in adjacent study areas. Under the standards in the program, ACS-Fairbanks does not need the support it receives annually. It designed its network efficiently to serve its customers, and the universal service programs should be able to capture that efficiency.

[38] S. Rep. No. 104-23, at 26.

GCI's experience has shown that regulatory rather than economic barriers impose arbitrary limits on investments in rural areas, to the detriment of rural consumers. Because there are no limits imposed by state or federal regulators to the deployment of broadband services, GCI has made broadband available to over 150 communities in Alaska, including 134 remote rural communities.[39] GCI can only offer voice telephony services to three communities in the state because the rural exemption in Section 251(f)(1) applies not only to UNEs, but exempts qualifying carriers from Section 251(c)(2) requirements for interconnection at any technically feasible point at just and reasonable rates. The FCC recognizes that 251(c)(2) interconnection is necessary for market entry.[40] This barrier to entry must be overcome for each additional community served. It has permitted monopolists interested in preserving market power to impair consumers' interests in choice and innovative service offerings. If able to design services to meet consumer demand, GCI would have the opportunity to enter more markets as a local service provider with the goal of providing broadband service to every community in the state.

Rather than treating universal service and competition as mutually exclusive choices, the Act's twin goals of universal service and competition must be harmonized to deliver the greatest benefit to consumers. If support amounts are set at most efficient cost of serving a particular market and all providers collected support on this same basis, then universal service support programs could capture the economic efficiencies achieved in the competitive marketplace.[41] Current providers would have the incentive to minimize costs when competing for customers. Paying all providers the same amount of support would neutralize the market-distorting effect of a subsidy. If competitors were paid no support, they would have to be more efficient than the

[39] GCI offers wireless broadband internet access in 134 remote communities.
[40] *First Universal Service Report & Order*, paragraph 13.
[41] SeeExhibit B to Comments of General Communication, Inc., in CC Docket 96-45 filed August 6, 2004, "Harnessing Competitive Forces to Foster Economical Universal Service" by David E. M. Sappington.

incumbent by the same measure as was paid in support to the incumbent even to enter the market. This barrier stifles competition and eliminates market incentives for increased incumbent efficiencies. Alternatively, if each provider was paid based on their own costs, no carrier would have an incentive to reduce costs. Regulators have long known that a ratesetting system based on recovery of costs creates incentives to inflate rather than minimize costs.

Finally, in order to function in competitive markets, universal service programs need to be refocused on the needs of consumers. The aberrant consequences of the existing programs that focus on the companies' costs rather than the consumers' ability to pay for a threshold level of services are the genesis of the SAM proposal. That proposal was designed to resolve the inequity created by the fact that Qwest, that serves many remote rural areas in Oregon, receives no support in those areas because it also serves some more densely populated areas; on the other hand smaller cooperative phone companies in Oregon that serve only isolated rural areas receive substantial support. Paying support to carriers based on their overall cost characteristics rather than the cost of serving customers in particular areas creates disincentives for large companies to invest in rural networks. That economic consequence of the current system has frustrated the Oregon Commission's efforts to improve the quality of services available statewide. The SAM proposal purports to resolve this dilemma by allowing the state commission to direct distribution of high cost funds within their boundaries. However, the SAM proposal treats the symptom rather than curing the cause of the problem. The SAM solution would also introduce a new compliment of legal issues into the universal service debate. [42] Allowing states to reallocate high

[42] The FCC could not assure nationwide affordability and reasonable comparability of rates if each of the states directed distribution of high cost funds within their boundaries. 47 USC Section 254(b)(3). Support allocated by 50 different state commissions would not be predictable. The FCC would not be able to measure its sufficiency. 47 USC Section 254(b)(5). Companies operating in several different states would be subject to several different distribution systems, at best skewing investment plans. If the legal and commercial problems are not enough, the administrative difficulties created for USAC would be extraordinarily expensive to resolve. Instead of one set of standards for distributing funds, USAC would administer 50 systems.

cost universal service funding within their borders mitigates the symptoms, but does not cure the underlying problems created by the fact that there are no way to effectively measure whether rates are reasonably comparable or affordable, and whether support is sufficient or even necessary. Not until the universal service distribution mechanisms are refocused on the consumers will they be able to pass the statutory tests.

Support should be fully portable. Providers should not be paid for customers that they do not serve. The oft repeated argument that it takes a network instead of a line to serve a customer is a self-serving excuse to force consumers in other parts of the nation to support an inefficient provider. There is no reason to continue to pay providers for lines to customers that they no longer serve. The Joint Board should therefore reject any attempt by rural ILECs to rewrite the 1996 Act to shield themselves from the forces of competition under the guise of protecting the integrity of universal service. Further, once the rules are written, they should be implemented as written.[43]

Support should be as technology agnostic as consumers have become. Whatever equipment can provide quality service should be eligible to receive support. The Texas Commission honored this principle by designating a carrier that intends to use a satellite to provide local service to previously unserved customers as an ETC and TSP (the designation required for eligibility for the Texas universal service fund).[44] The availability of local service by satellite has the potential to eliminate the need for expensive line extensions and a carrier of last resort policy that assumes (often incorrectly) that the requirement to serve an additional customer is burdensome. In a competitive market where incentives have not been distorted by

[43] GCI requested clarification from the FCC of USAC's implementation of the portability rules. See letter dated June 29, 2005, Request for Clarification of Clerical Changes and for Direction to USAC, CC Docket 96-45.
[44] Order No. 3 in docket No 31401 and Order no. 5 in Docket 31399, Application of Dialtone Services, issued September 2, 2005.

the support mechanism, carriers will be eager to serve additional customers. Instead of a support system based on the presumption that service will be provided by a wireline carrier, support should be available for any provider that provides the supported service.

Freezing the incumbents' per line support when a competitor enters the market would mitigate the issue of the increasing drain on the fund created by competition in high cost areas.[45] As noted in Appendix B, the Rural Task Force recommended that per line support be capped upon entry of a competitor.[46] Under the current rules, as an incumbent loses lines to a competitor, they continue to be made whole because the amount of support is determined by their total costs divided by the number of lines. As the number of lines decreases, the per line support increases, destroying the incentive to increase efficiency that competition would normally impose on the incumbent and creating a windfall for the competing carrier who was willing to enter the market with a lesser amount of support.

Creating a separate support mechanism for competitive providers, as the USERP proposal in Appendix D suggests, is the wrong way to encourage the development of competitive markets and deployment of innovative technologies. First, separate bases for support encourage providers to maximize support relative to their competitors. Second, a carrier-by-carrier costing approach assumes that true costs can be determined by regulators and that determining those costs is a worthwhile endeavor. As the industry has evolved to competitive markets, more states require less accounting data from carriers. Therefore, even if it was theoretically possible to accurately determine costs, most of the industry no longer maintains the records needed to make cost filings. The accounting systems designed to determine the costs of service delivered over a landline system are not likely to accurately reflect the costs of service delivered over another

[45] GCI has consistently supported this concept. Reply Comments of General Communication, Inc. filed June 3, 2003 in CC Docket 96-45, pages 35-40.
[46] Appendix B, page 9, Rural Task Force White Paper No. 5, September 2000.

technological platform. Support should be designed to meet an efficient carrier's cost of service. The purpose of determining costs is to insure that a sufficient amount of support is delivered. Without first defining what is affordable to consumers and what rates are reasonably comparable, sufficient support cannot be measured. Sufficient support should be set at the difference between a benchmark rate and the rate at which the most efficient carrier in the market, not necessarily the incumbent, can provide the supported service.

By failing to adapt universal service programs to competitive markets, regulators are forgoing the opportunity to let the program take advantage of the efficiencies brought by competitive providers with new technologies and new service offerings. By inhibiting the development of competitive markets, regulators are denying consumers in high cost areas some of the benefits that competition has brought to the rest of the country and denying consumers nationwide who are contributing to universal service funding the benefit of cost savings.

V. STATES SHOULD HAVE AN ENHANCED ROLE IN ENSURING ACCOUNTABILITY FOR USE OF USF FUNDS/MONITORING BENCHMARKS

The noticed proposals would give states a larger role in assuring that the Act's directives are met. The value of an enhanced state role must be measured by reference to the statutory standards. How can increased state involvement in the universal service process increase the FCC's ability to assure that rates are reasonably comparable and affordable nationwide? How can the involvement of state commissions insure that support is predictable and sufficient? The Act recognizes a necessary partnership between states and the FCC to implement universal service policy. [47] However, the Joint Board members' proposals for more authority and

[47] 47 USC Section 254 (a).

responsibility for distribution of high cost universal service funding focus on the wrong aspect of universal service programs. States should not be given the responsibility to allocate high cost funds. That would further complicate the effort to assure affordable and reasonably comparable rates nationwide. Instead, states should be encouraged to more carefully monitor companies' use of support to assure that customers benefit.

Allowing states to decide which companies will receive universal service funding will undermine investment incentives in high cost markets. The plant and equipment necessary to provide communication services requires a substantial capital investment. It will be difficult to get commitments from the financial markets with the prospect of revenue streams available from universal service programs varying from year to year on an individual company basis; introducing an additional element of risk into the investment decision.[48] Allowing states to allocate funds will drive already scarce investors in rural communications markets to other industries and increase the returns required by the remaining investors.

Basing support on the costs of serving customers would better provide investors with the necessary certainty. With support based on customer needs, companies could base their business plans on a targeted number of customers and investors could evaluate their prospective ability to meet those goals. Clear rules about when companies would be eligible to receive universal service support would encourage investment in rural communication providers.

States potentially have an essential role in setting and periodically reviewing the rate benchmark. The proposal in Appendix A correctly states the purpose of a national rate benchmark. A benchmark would "establish an expectation that local consumers would be responsible for the costs of the local network serving them up to a level at which the price of supported services would not be affordable or reasonably comparable, as required by section

[48] This is different than the loss of support if a customer is lost in a competitive market.

254."[49] States, with the regulatory responsibility for rates, are the appropriate forum for review of rate benchmarks. States are uniquely qualified to resolve amongst themselves the inequities created by a rebalanced rate structure that passes all network costs to consumers and a rate structure that still includes implicit subsidies.

The SAM proposal described in Appendix A perpetuates inefficiencies of the current system, by basing the amount distributed to states on the current allocation. The SAM mechanism fails to meet the specific, predictable and sufficient test of 254(b) of the Act. With states having the authority to decide how funds are allocated within their borders, companies would face different tests in each state. Requiring states to make decisions in five year time blocks as Appendix A suggests could not meet the statutory tests of sufficiency and predictability. This proposal would provide no support for a company that enters the market for five years, or would continue support at the same level to a provider that loses many customers over five years even though the support would no longer be necessary to provide support to the lost customers.

States' roles in the administration of universal service funds should be directed in a way that advances universal service, not further complicates the existing programs by preserving the existing defects. Shifting responsibility for allocating high cost funds to states does not address the fundamental issues that those funds may not be necessary or sufficient for universal service support now, and do not result in reasonably comparable and affordable rates nationwide and simply adds a layer of administrative complexity onto a defective system.

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[49] Appendix A to *Federal-State Joint Board on Universal Seeks Comment on Proposals to Modify the Commission's Rules Relating to High Cost Universal Service Support*, page 4.

CONCLUSION

The universal service reform issues raised by the proposals of the state members of the Joint Board cannot be resolved independent of the *Qwest II* remand. Until the fundamental policy issues underlying the universal service programs are better defined in light of the technological and market advances that have occurred since 1996, no effective, lasting reform of universal service can occur. As the decline in revenue base increases pressure on the fund's sustainability, it is time to examine the difficult underlying policy questions. Universal service support must reflect the realities of service provided over multiple technological platforms by competing providers. Universal service programs must focus on the customers that receive service instead of the companies that provide it in order to meet the statutory standards of insuring reasonably comparable and affordable service to all Americans.

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